



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2982



Bernard Chiu, Managing Partner  
Lake Winnepesaukee Resort, LLC  
250 First Avenue, Suite 301  
Needham, MA 02494

ADMINISTRATIVE ORDER  
*No. WD 01-29*

August 3, 2001

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to Lake Winnepesaukee Resort, LLC pursuant to RSA 485-A:22.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 6 Hazen Drive, Concord, NH.
2. Lake Winnepesaukee Resort, LLC ("LWR") is a company registered to do business in New Hampshire having a mailing address of 250 First Avenue, Suite 301, Needham, MA 02494.

**C. STATEMENT OF FACTS AND LAW**

1. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, the Commissioner of DES has adopted Env-Ws 415 to implement this program.
2. RSA 482-A authorizes DES to regulate dredging, filling, and construction in and adjacent to surface waters of the state, shorelines of surface waters, and in wetlands. RSA 482-A:11, I authorizes DES to adopt rules to implement the wetland laws. Pursuant to this authority, DES has adopted NH Admin Rules Wt 100 *et seq.* to implement this program.
3. RSA 482-A:14, III provides that failure, neglect or refusal to comply with RSA 482-A or rules adopted under that chapter, or an order or a condition of a permit issued under RSA 482-A, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by RSA 482-A shall be deemed violations of RSA 482-A.
4. LWR is the owner of property located in New Durham, NH more particularly identified on Town of New Durham Tax Map 26A as Lots 4 and 51 (the "Property").
5. On July 9, 2001, Site Specific permit WPS-5948 (the "Permit") was issued to LWR for reconstruction of a golf course on the Property. The approved plans and supporting documentation are incorporated into the Permit by reference. Condition No. 8 of the Permit required: "Reconstruction shall be performed in accordance with the submitted construction

sequence. No more than four fairways shall be disturbed and unstabilized at any one time'

6. RSA 485-A:17 requires any person who proposes to significantly alter the terrain to obtain a permit from DES prior to initiating the work.

7. Env-Ws 415.09(i) and (k) require that temporary and permanent methods for preventing soil erosion and controlling runoff be employed during earth moving activities.

8. Env-Ws 415.09(j) requires construction phasing and sequencing, including methods for limiting the length of time of exposure of unstabilized soils.

9. On July 23, 2001 DES personnel conducted a site inspection of the Property. During the inspection it was observed that 11 holes of the golf course were disturbed and at various stages of reconstruction. Fred Ward, project supervisor for Peerless Golf, Inc, the contractor for the project, was advised of the permit condition requiring that no more than four fairways be under construction at any time. DES also indicated that additional silt fence needed to be installed on hole #3 near an existing pond, along the slope of a disturbed area for the construction of tees for hole #7, and along a wetland area adjacent to hole #13. Silt fence was observed at the toe of a stonewall which formed the boundary with wetlands adjacent to holes #14 and 16. Mr. Ward indicated that temporary seeding would be placed on all disturbed areas and that additional silt fence would be installed where directed.

10. On July 26, 2001 DES telephoned Mr. Ward to inquire about the progress with the placement of temporary seed and to advise that an additional line of silt fence needed to be placed at the top of a stonewall which formed the boundary with wetlands adjacent to holes # 14 and 16. Mr. Ward indicated that one hole had been seeded and that inclement weather would preclude any additional seeding on this date. Mr. Ward also indicated that the additional line of silt fence would be installed.

11. On July 29, 2001, DES conducted a second site inspection of the property. During the inspection the following was observed:

- a. No silt fence was in-place along the top of the stonewall forming the boundary to wetlands adjacent to holes # 14 and 16.
- b. Temporary seeding had been placed on holes 3, 4, 6, 7, and 8. Temporary seeding had not been placed on the remaining disturbed areas (holes 5, 13, 14, 15, 16, and 17).
- c. Sediment deposition was evident within a wooded area and immediately adjacent to a stream along the southwest side of hole #8.
- d. Additional silt fence was required adjacent to the tees of holes 7, 8, and 14; the southwest side of the 8<sup>th</sup> fairway; the access road between holes 8 and 17; the fairway of hole 15; the northeast side of the 7<sup>th</sup> fairway; and north of the 14<sup>th</sup> green adjacent to a wetland.

12. On July 30, 2001, Kip Morrison of Peerless Golf was informed via telephone of the observations on July 29, 2001. Mr. Morrison was directed to remove sediments, seed, mulch,

and install additional silt fence in the area described in 1c above, and to place additional silt fence in the areas described in 11a and 11d above.

13. On July 31, 2001, DES personnel conducted a third site inspection. At that time, DES documented fill and/or sediment deposition within wetlands and surface waters at the following locations: southwest side of the 8<sup>th</sup> fairway; south of the 13<sup>th</sup> green; between the 14<sup>th</sup> and 16<sup>th</sup> fairways; north of the 14<sup>th</sup> green; south of the 15<sup>th</sup> tees; and along the access road between the 8<sup>th</sup> and 17<sup>th</sup> holes. In addition, it was determined that work had been performed, without the required permit, in wetlands located between the 14<sup>th</sup> and 16<sup>th</sup> fairways, and north of the 3<sup>rd</sup> fairway.

14. During conversations with on-site personnel on July 31, 2001, DES learned that construction of the golf course had begun approximately six weeks prior to this date.

15. RSA 482-A:3, I states that "[no] person shall excavate, remove, fill, dredge, or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the State without a permit from [DES]."

16. No permit under RSA 482-A:3, I has been issued by DES for this project. An application for a permit under RSA 482-A:3, I was received by DES on April 9, 2001.

#### **D. DETERMINATION OF VIOLATIONS**

1. LWR has violated NH RSA 485-A:17 by significantly altering terrain prior to obtaining the required permit from DES.

2. LWR has violated NH RSA 485-A:17 and Env Ws 415.09(i) by failing to install adequate erosion control measures on the Property.

3. LWR has violated NH RSA 485-A:17 and Env Ws 415.09(j) by failing to stabilize areas within the Property.

4. LWR has violated Env-Ws 415.13 by failing to comply with the conditions of the Permit.

5. LWR has violated RSA 482-A:3, I by placing fill in wetlands and surface waters of the State without a permit from DES.

#### **E. ORDER**

Based on the above findings, DES hereby orders LWR as follows:

1. Immediately cease and desist from creating any soil disturbance on any portions of the Property not disturbed as of the date of this Order. No additional disturbance shall occur without prior approval from DES.

2. Within 5 days of this Order, install all necessary erosion and sediment controls at the Property in accordance with the Permit.

3. Within 10 days of this Order, remove all fill placed within wetlands and stabilize disturbed

wetland areas by placement of weed-free straw.

4. Within 10 days of this Order, retain the services of an environmental consulting company for the purposes of providing independent professional environmental inspections of the project. The company shall be approved by DES. The company shall inspect the project at a minimum frequency of once per week and after any rain event with a total precipitation of one-inch or greater. The inspections shall be for the purposes of determining compliance with the permit. The company shall submit a written report to DES within 24 hours of the inspections. The reports shall describe, at a minimum, whether the project is being constructed in accordance with the approved sequence, shall identify any deviation from the conditions of this permit and the approved plans, and identify any other noted deficiencies. The company shall be retained for the duration of the project.

5. Within 20 days of this Order, provide a source of irrigation water at the Property such that vegetation can be established and maintained in a healthy condition on all disturbed areas of the Property.

Submit all required submittals and correspondence to:

Ridgely Mauck  
DES Water Division, Land Resources Management Program  
6 Hazen Drive - P.O. Box 95  
Concord, NH 03302-0095


#### **F. APPEAL**

Any person aggrieved by this Order may appeal the Order to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve LWR of the obligation to comply with the Order.

### G. OTHER PROVISIONS

Please note that RSA 485-A:22 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. LWR remains obligated to comply with all applicable requirements, in particular installation of sufficient sediment and erosion controls to prohibit sediment from leaving the Property. DES will continue to monitor LWR's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Carroll County Registry of Deeds so as to run with the land.

  
**COPY**  
for Harry T. Stewart, P.E., Director  
Water Division

  
**COPY**  
George Dana Bisbee, Assistant Commissioner

Certified Mail # 7099 3400 0002 9774 8524  
cc: Gretchen Rule, DES Enforcement Coordinator  
Charles Knox, DES PIP Office  
Ridgely Mauck, DES  
Rene Pelletier, DES  
Carroll County Registry of Deeds  
New Durham Planning Board  
New Durham Conservation Commission  
Representative Jeb Bradley, Carroll County, District No. 8